



2009 ASSEMBLY BILL 419

September 11, 2009 – Introduced by Representatives RADCLIFFE, PARISI, JORGENSEN, SHILLING, BIES, TURNER, HRAYCHUCK, BERNARD SCHABER, STEINBRINK, ROYS, STASKUNAS, BERCEAU and SUDER, cosponsored by Senators TAYLOR and KEDZIE. Referred to Committee on Corrections and the Courts.

1 **AN ACT** *to renumber and amend* 949.04 (2); *to amend* 949.24 (1); and *to create*
2 901.08, 950.04 (1v) (er), 971.23 (5c) and 971.23 (6c) of the statutes; **relating to:**
3 rape shield provisions in civil proceedings, discovery and inspection of victims
4 and witnesses, and victims rights.

Analysis by the Legislative Reference Bureau

This bill prohibits a court from ordering a witness or a victim, as a condition of allowing testimony in a criminal case involving sexual assault or repeated sexual assault of a child, sexual assault, or other criminal acts that are sexually motivated, to submit to a mental examination to assess his or her credibility. This bill also generally prohibits a defendant from compelling a crime victim to a pretrial interview or deposition.

Current law provides for compensation to victims of certain crimes and to health providers who perform certain procedures on victims of a sex offense. The Department of Justice designs forms for persons applying for compensation. This bill makes any personally identifiable information about the victim on the form confidential and not a public record.

Generally, evidence that has the tendency to make the existence of a fact more probable or less probable (relevant evidence) is admissible in a court action that involves the issues concerning that fact. Some relevant evidence is excluded from admission if it creates unfair prejudice, confuses the issues, misleads the jury, or is repetitious of other evidence. Some relevant evidence, such as the test for the presence of HIV, is not admissible as evidence to prove a person's character. Some

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relevant evidence is not admissible unless the collection of that evidence is done under certain protocols or by certain persons certified to collect that evidence, such as the presence of lead in dust.

This bill prohibits, in any civil action seeking damages, the admission of evidence concerning the sexual conduct of a person who has been the victim of certain criminal acts, including sexual assault, sexual exploitation by a therapist, and sexual crimes against children if that evidence is offered to prove the victim engaged in other sexual conduct or to prove the victim's sexual predisposition. This prohibition does not apply to evidence of consensual sexual conduct between the victim and the alleged offender or to evidence of sexual conduct that resulted in the victim's damages if that evidence is first shown to the court in the judge's chambers to be related to the victim's damages.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 901.08 of the statutes is created to read:

2 **901.08 Admissibility of sexual conduct. (1)** In this section:

3 (a) "Sexual conduct" means any conduct or behavior relating to sexual
4 activities, including prior experience of sexual intercourse or sexual contact, use of
5 contraceptives, and sexual life–style.

6 (b) "Sexual misconduct" includes a violation of s. 940.22 (2), 940.225 (1), (2), or
7 (3), 940.32, 942.08, 942.09, 948.02, 948.025, 948.05 (1) or (1m), 948.055 (1), 948.06,
8 948.07, 948.075, 948.08, 948.09, 948.095, 948.10, or 948.11 (2) and includes sexual
9 harassment, as defined in s. 111.32 (13).

10 (c) "Victim" means a person against whom sexual misconduct allegedly has
11 been committed.

12 **(2)** In a civil action involving damages for an injury resulting from sexual
13 misconduct, any evidence concerning a victim's sexual conduct, opinions of the
14 victim's sexual conduct, and reputation as to the victim's sexual conduct, offered to

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1 prove that the victim engaged in other sexual conduct or to prove the victim's sexual
2 predisposition may not be admitted into evidence during the course of any hearing
3 or trial, nor may any reference to such sexual conduct be made in the presence of the
4 jury, except the following:

5 (a) Evidence of the specific, consensual sexual conduct between the alleged
6 offender and the victim.

7 (b) Evidence of specific instances of sexual conduct by the alleged victim after
8 an in camera showing by the party requesting the admission that the sexual conduct
9 was the actual cause of the victim's injury for which damages are requested in the
10 action.

11 **SECTION 2.** 949.04 (2) of the statutes is renumbered 949.04 (2) (a) and amended
12 to read:

13 949.04 (2) (a) The department shall prescribe application forms for awards
14 under this subchapter ~~and, If the application results from the commission of or the~~
15 ~~attempt to commit a crime specified in s. 940.22 (2), 940.225, 948.02, 948.025,~~
16 ~~948.051, 948.085, or 948.095 or a crime or an act compensable under s. 949.03 that~~
17 ~~was sexually motivated, as defined in s. 980.01 (5) any personally identifiable~~
18 ~~information, as defined in s. 19.62 (5), provided on the application form is~~
19 ~~confidential and not a public record.~~

20 (b) ~~The department~~ shall furnish law enforcement agencies with the forms
21 ~~under par. (a).~~ The law enforcement agency investigating a crime shall provide forms
22 to each person who may be eligible to file a claim under this subchapter.

23 **SECTION 3.** 949.24 (1) of the statutes is amended to read:

24 949.24 (1) ELIGIBILITY. Any health care provider who conducts an examination
25 to gather evidence regarding a sex offense may apply for an award under this

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1 subchapter. Any personally identifiable information, as defined in s. 19.62 (5),
2 provided on the application form about the victim of the sex offense is confidential
3 and is not a public record.

4 **SECTION 4.** 950.04 (1v) (er) of the statutes is created to read:

5 950.04 (1v) (er) To not be compelled to submit to a pretrial interview or
6 deposition by a defendant or his or her attorney as provided under s. 971.23 (6c).

7 **SECTION 5.** 971.23 (5c) of the statutes is created to read:

8 971.23 (5c) PSYCHIATRIC TESTING OF VICTIMS OR WITNESSES. In a prosecution of
9 s. 940.225, 948.02, or 948.025 or of any other crime if the court determines that the
10 underlying conduct was sexually motivated, as defined in s. 980.01 (5), the court may
11 not order any witness or victim, as a condition of allowing testimony, to submit to a
12 psychiatric or psychological examination to assess his or her credibility.

13 **SECTION 6.** 971.23 (6c) of the statutes is created to read:

14 971.23 (6c) INTERVIEWS OF VICTIMS BY DEFENSE. Except as provided in s. 967.04,
15 the defendant or his or her attorney may not compel a victim of a crime to submit to
16 a pretrial interview or deposition.

17 **SECTION 7. Initial applicability.**

18 (1) The treatment of section 971.23 (5c) of the statutes first applies to
19 complaints filed on the effective date of this subsection.

20 (END)